

48A C.J.S. Judges § 176

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

a. Authority to Make Decision on Evidence Heard by Predecessor

§ 176. By statute or rule

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Some states have statutes or rules which provide that where a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it, upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.

Many states have statutes or rules expressly authorizing a successor judge to make a decision in a case in which evidence was presented to and heard by a prior judge as long as findings of fact or conclusions of law have been filed by the prior judge.¹ In addition, other states have statutes or rules, based on a federal rule of civil procedure,² which provide that where a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it, upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.³

The federal rule and state provisions modeled on it are intended to prevent unnecessary expense and delay by allowing a successor judge to complete a proceeding halted by the death, disability, or resignation of the original trial judge.⁴ At the same time, such provisions recognize the risks inherent in a successor judge's determination of the credibility of a witness who the judge has not seen or heard.⁵ Accordingly, before rendering judgment in a case heard by a judge who has become unavailable to decide the case, the successor must read and consider all relevant portions of the record and must have sufficient confidence in the existing record to be able to resolve the case on a fair and intelligent basis.⁶ The successor judge is also required, at the request of a party, to recall any witness whose testimony is material and disputed and who is available to testify again without undue burden.⁷

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Footnotes

- 1 See § 179.
- 2 Fed. R. Civ. P. 63.
- 3 N.D.—Weigel v. Weigel, 1999 ND 55, 591 N.W.2d 123 (N.D. 1999).

W. Va.—Allen v. Allen, 212 W. Va. 283, 569 S.E.2d 804 (2002).

A.L.R. Library
Power of Successor or Substituted Judge, in Civil Case, to Render Decision or Enter Judgment on Testimony Heard by Predecessor, 84 A.L.R.5th 399.
- 4 Conn.—Stevens v. Hartford Acc. and Indem. Co., 29 Conn. App. 378, 615 A.2d 507 (1992).
- 5 Conn.—Stevens v. Hartford Acc. and Indem. Co., 29 Conn. App. 378, 615 A.2d 507 (1992).
- 6 N.D.—Weigel v. Weigel, 1999 ND 55, 591 N.W.2d 123 (N.D. 1999).
- 7 N.D.—Helbling v. Helbling, 532 N.W.2d 650 (N.D. 1995).

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